

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ALPHONSE GAINER,)
Petitioner,) Case No. 7:19CV00448
v.))
M. BRECKON, WARDEN USP LEE,))
Respondent.)) **ORDER**
) By: James P. Jones
) United States District Judge

This matter is before me on the magistrate judge's Report and Recommendation ("Report") recommending that I deny the respondent's Motion for Summary Judgment as to this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. After review of the record, I will adopt the Report.

Petitioner Alphonse Gainer, a federal inmate, claims that he lost earned good conduct time ("GCT") without due process in prison disciplinary proceedings.¹ On April 8, 2011, Gainer was charged in Incident Report No. 2148487 with a disciplinary offense (Claim G). After a hearing, the Disciplinary Hearing Officer ("DHO") found Gainer guilty and sanctioned him with the disallowance of GCT. Gainer alleges that the DHO failed to provide him with a written statement of the

¹ Gainer's initial petition raised multiple, similar claims about other disciplinary proceedings. The court construed his petition as raising twelve separate due process claims, Claims (A) through (L), and severed those claims into eight separate cases. This case concerns Claim (G).

evidence relied on and the reasons for the sanctions imposed (“DHO report”). Based on this alleged violation of due process rights, Gainer seeks expungement of the disciplinary offenses and restoration of the GCT.

The Report recommends finding that Gainer received a copy of the DHO report regarding Claim (G) in 2019 during the course of this litigation, *see* ECF No. 11-10. Finding material facts in dispute regarding the respondent’s defenses, however, the Report recommends denying the Motion for Summary Judgment. No party has filed objections to the Report, and I find no clear error.

For the stated reasons, it is **ORDERED** as follows:

1. The Report and Recommendation, ECF No. 18, is ADOPTED in full;
2. The respondent’s Motion for Summary Judgment, ECF No. 10, is DENIED; and
3. Petitioner Gainer is hereby DIRECTED TO SHOW CAUSE within 21 days from the entry of this Order why this case should not be dismissed as moot, because he now has a copy of the DHO Report related to Claim (G).

ENTER: September 30, 2020

/s/ James P. Jones
United States District Judge